

401 KAR 11:050. Operator certification.

RELATES TO: KRS 223.160-220, 224.10-420(2), 224.73-110, EO 2009-538

STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110, 224.73-110, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of water and wastewater operators. EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet. This administrative regulation establishes application and examination procedures; provisions relating to certificate issuance, renewal, and termination; reciprocity; training; and disciplinary actions.

Section 1. Application and Examination for Certification. (1) An individual desiring to become a certified operator shall first meet the qualifications established in 401 KAR 11:030 or 11:040 and then pass an examination administered by the cabinet.

(2)(a) An applicant for certification shall complete the Registration Form for Exams and Training and Education and Experience Documentation Form and shall submit them and the certification application fee to the cabinet.

(b) In addition to the requirements of paragraph (a) of this subsection, an applicant desiring to obtain an Operator in Training designation shall submit a signed letter for a certified operator located at the facility where the applicant will work. The letter shall include:

1. A statement from the certified operator indicating that the certified operator shall oversee the work of the applicant seeking an Operator in Training designation;

2. A commitment that the certified operator shall serve as a mentor to the applicant seeking an Operator in Training designation as long as the applicant is under the certified operator's direct responsible charge;

3. Verification that the certified operator is not currently the mentor for any other individuals with an Operator in Training designation; and

4. Confirmation that the certified operator has obtained a certification level that is equal to or greater than the certification level required to serve in primary responsibility of the facility.

(c) An application shall not be submitted to the cabinet unless the applicant has met the qualifications for examination.

(3)(a) After receipt of the application items established in subsection (2) of this section, the cabinet, considering the recommendation of the board, shall determine if the applicant meets the qualifications established in 401 KAR 11:030 or 11:040.

(b) If the applicant meets the qualifications, the cabinet shall approve the application and notify the applicant of the scheduled exam date.

(4)(a) Upon the applicant's completion of the examination, the cabinet shall notify the applicant of the applicant's examination score.

(b) A score of at least seventy (70) percent shall be required to pass the examination.

(5)(a) The cabinet shall issue a certificate and a wallet card to an applicant who successfully passes the certification examination.

(b) The certificate and wallet card shall designate the certification classification for which the operator has demonstrated competency.

(6) An applicant who fails to pass an examination may apply to take the examination again by resubmitting the Registration Form for Exams and Training and the application fee to the cabinet.

(7)(a) An examination shall not be returned to the applicant, but results may be reviewed by the applicant with a member of the cabinet.

(b) A request for a review shall be submitted to the cabinet in writing.

(8) A certificate shall be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the U.S. if:

(a) The requirements for certification under which the certificate was issued are not less stringent than the requirements for certification established in KRS 223.160-220, 224.73-110, and 401 KAR Chapter 11; and

(b) The applicant submits an Application for Reciprocity form and the reciprocity fee to the cabinet.

(9)(a) A certified operator who holds an Operator in Training designation may upgrade the certification by removing the Operator in Training Designation without examination if the operator:

1. Has satisfied the requirements of Section 3(1)(a) and (b) of this administrative regulation;

2. Has acquired the minimum experience required for the certification being pursued as required by 401 KAR 11:030 or 11:040; and

3. Submits a letter from the certified operator who has served as the applicant's mentor during the Operator in Training period that recommends the removal of the Operator in Training designation.

(b) A certified operator with an Operator in Training designation who is unable to comply with the requirements established in paragraph (a) of this subsection shall apply for and retake the certification exam to upgrade the operator's certification.

Section 2. Duration of Certification. (1)(a) Wastewater certifications shall expire on June 30 of an odd-numbered year unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Wastewater certifications issued on or after January 1 and on or before June 30 of an odd-numbered year shall expire on June 30 of the next odd-numbered year.

(2)(a) Water certifications shall expire on June 30 of an even-numbered year unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Water certifications issued on or after January 1 and on or before June 30 of an even-numbered year shall expire on June 30 of the next even-numbered year.

(3)(a) An expired certification shall continue in force pending the administrative processing of a renewal if the certified operator has complied with the renewal requirements of Section 3 of this administrative regulation.

(b) A certification continued in accordance with this subsection shall remain fully effective and enforceable.

(4) A certification shall terminate if not renewed on or before December 31 of the year the certification expired.

Section 3. Continuing Education and Certification Renewal. (1) A certified operator who is not designated an Operator in Training may renew a certification without examination if the operator has:

(a) Accumulated the training hours required in subsection (5) of this section; and

(b) Submitted a completed Application for Certification Renewal form and the renewal fee to the cabinet or has renewed the certification electronically on the cabinet's Web site.

(2)(a) A certified operator seeking to renew a certification with an Operator in Training designation shall apply for and retake the certification exam as provided in Section 1 of this administrative regulation.

(b) The cabinet shall not approve an operator to take an exam to renew a certification with Operator in Training designation unless the applicant has accumulated the training hours re-

quired in subsection (5) of this section.

(3) If the Application for Certification Renewal form and the renewal fee are not received by the cabinet or submitted electronically by June 30 of the year the certification expires, a late renewal fee as established in 401 KAR 8:050, Section 3 or 11:060, Section 1 shall be paid.

(4)(a) A terminated certification shall not be renewed.

(b) An operator whose certification is terminated and who wishes to become recertified shall reapply for and pass an examination in accordance with Section 1 of this administrative regulation.

(5)(a) Prior to applying for certification renewal, a certified operator shall complete the required number of cabinet-approved training hours.

(b) A certified operator holding multiple wastewater certifications issued in accordance with this administrative regulation shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each certificate.

(c) A certified operator holding multiple water certifications issued in accordance with this administrative regulation shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each certificate.

(d) Hours earned prior to initial certification shall not count toward certification renewal.

(e) Wastewater training hours shall expire two (2) years from the date earned.

(f) Water training hours shall be completed for each renewal during the two (2) year period immediately prior to the certificate expiration date.

1. Certified operators with a Bottled Water, Limited, Class I or II Treatment, Collection, or Distribution certification shall complete twelve (12) hours of approved training; or

2. Certified operators with a Class III or IV Treatment, Collection, or Distribution certification shall complete twenty-four (24) hours of approved training.

(6)(a) A training provider seeking approval of certified operator training shall submit to the cabinet a completed Application for Approval of Courses for Continuing Education Credit form.

(b) Upon completion of the approved training, the provider shall submit to the cabinet a completed Continuing Education Activity Report form.

(c) A certified operator who has attended training that has not been submitted to the cabinet for approval may apply for training approval as established in paragraph (a) of this subsection.

(d) A certified operator who provides approved training shall receive hour-for-hour credit for actual instruction time.

(7)(a) Cabinet approval of training shall expire two (2) years following the date of approval.

(b) The cabinet, in consultation with the board, shall extend the approval expiration date if:

1. The provider requests the extension in writing; and

2. The training has not changed from the previous approval.

Section 4. Disciplinary Action. (1) A certified operator shall be subject to disciplinary action if the cabinet, in consultation with the board, determines that the certified operator has not satisfactorily performed the operator's duties in accordance with 401 KAR 11:020.

(2)(a) A written complaint received by the board or cabinet regarding a certified operator, unless duplicitous or frivolous, and violations of 401 KAR 11:020 that are identified by the cabinet shall be evaluated by the board.

(b) The certified operator shall appear before the board if requested by the board

(3) The board shall make a recommendation to the cabinet regarding disciplinary action. The board may recommend that disciplinary action not be taken or recommend that a disciplinary action be taken if the board determines that the certified operator has not satisfactorily per-

formed operator duties in compliance with 401 KAR 11:020.

(4)(a) Upon receiving a recommendation from the board, the cabinet shall review the available evidence.

(b) After completing the review, the cabinet shall initiate the recommended disciplinary action or notify the board as to why an alternative disciplinary action was taken.

(5) A disciplinary action shall be commensurate with the severity, duration, and number of the violations. Disciplinary actions may include:

(a) Probation of the operator's certification for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certification for a specified period of time, not to exceed four (4) years, during which the certification shall be considered void;

(c) Revocation of the operator's certification;

(d) Civil or criminal penalties; or

(e) A combination of the disciplinary actions established in paragraphs (a) through (d) of this subsection.

(6) If disciplinary action is taken, the cabinet shall notify the certified operator and the operator's employer by certified mail of the action, the reasons outlined for the action, and the length of time for which the disciplinary action shall apply.

(7)(a) A certified operator whose certification has been suspended shall not have primary responsibility during the period that the suspension remains in effect.

(b) Experience gained during a suspension shall not be included toward meeting the requirements of 401 KAR 11:030 or 11:040.

(8) If a certification is revoked, the operator shall be ineligible for future certification.

(9) A certified operator who is aggrieved by a disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Registration Form for Exams and Training", August 2009;

(b) "Education and Experience Documentation Form", July 2009;

(c) "Application for Certification Renewal", August 2009;

(d) "Application for Approval of Courses for Continuing Education Credit", August 2009;

(e) "Continuing Education Activity Report", August 2009; and

(f) "Application for Reciprocity", July 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Compliance Assistance, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (35 Ky.R. 479; Am. 1216; eff. 3-6-2009; eff. 2-5-2010; TAm eff. 7-8-2016.)